

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

STATE PROGRAM GUIDANCE

for

Development and Review of State Program Applications

and

Evaluation of State Legal Authorities

(40 C.F.R. Parts 122 - 125 and 403)

VOLUME ONE

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Office of Water

United States Environmental Protection Agency

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PREFACE

The NPDES State Program Guidance is the result of a two year effort by the Office of Water to assemble relevant EPA policy and guidance memoranda, case law and model documents, along with a clear and comprehensive discussion of federal NPDES requirements, and to reproduce these materials in an accessible and convenient format. Given the fundamental and increasing importance of NPDES State programs in the accomplishment of our mission under the Clean Water Act, we are pleased to be able to provide State agencies with this Guidance. The EPA Office of Water plans to update the Guidance as necessary by providing States and EPA Regional Offices with additional pages (or where appropriate, replacement pages) for inclusion in the looseleaf notebook.

I believe this document will be of use to State and federal personnel involved in the administration of programs to protect one of our nation's most valuable resources, clean water. In addition, because it sets out federal requirements and policies for the NPDES program, I believe this guidance will promote understanding, efficiency and consistency in the implementation of the NPDES program while continuing to strengthen the State-federal partnership.

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NPDES STATE PROGRAM GUIDANCE

Introduction

The National Pollutant Discharge Elimination System (NPDES), established in 1972 under section 402 of the Federal Water Pollution Control Act (FWPCA)(33 U.S.C. §1251 et seq.), is now administered primarily by the States. To date, 37 States and Territories out of a possible 56 have received EPA approval for NPDES programs. Several of the remaining States are developing program applications. In addition, many of the approved programs are only authorized to administer the basic NPDES permitting program; under the 1977 Clean Water Act Amendments, these States must request approval of program modification to assume the pretreatment program and authority to regulate federal facilities. NPDES States also have the option of seeking authority to issue general permits for certain types of discharges.

State program development activity is not limited to these original program approvals. Most of the approved States began operating the NPDES program in the first three years of its existence. Since that time, federal law has undergone substantial amendment and revision. The NPDES regulations require approved States to modify their programs to reflect these changes. Similarly, State law may have changed since the original program approval through statutory or regulatory amendments or judicial decisions interpreting applicable requirements. These State changes also must be formally

transmitted to EPA with a request for program modification. To identify the need for legal revisions, and resolve any existing or potential problems resulting from lack of up-to-date authorities, EPA has initiated a program to review all existing State programs.

The purpose of this guidance is to provide assistance for persons preparing, reviewing, or evaluating State program applications, requests for modifications, and to measure the sufficiency of authorities for approved State programs. The NPDES regulations set out program requirements in some detail. This guidance is intended to supplement and clarify these regulations and policies and assist both State and EPA personnel in preparing and reviewing a program submission.

This guidance is a comprehensive delineation of the statutory, regulatory, programmatic, and resource requirements which States are expected to meet. It is intended to provide States with a clear and concise discussion of the requirements for a program submission and subsequent modifications. It is also expected that this guidance will aid EPA personnel in evaluating State legal authorities and ensure consistency in the level of scrutiny each program receives.

The State Program Guidance is divided into two distinct volumes. Volume One is a narrative discussion of the required legal authorities for State programs as well as the elements of a State program submission. It also discusses EPA's oversight of approved State programs. The first chapter of Volume One is background, and provides a capsulated history of the NPDES program, as related to State programs. The second chapter delineates the procedures to be followed for approval and modification of State programs. This Chapter also describes the program withdrawal process and the procedures for legal reviews of existing State programs. Finally, it discusses the criteria for determining whether a program modification needs to be publicly noticed.

Chapters Three, Four, and Five discuss the components of a State program application, including statutes, regulations, procedures (embodied in a program description), and the Memorandum of Agreement (MOA) between the State and the appropriate EPA Regional Administrator. Each of these Chapters is further subdivided into four subparts dealing with the requirements for NPDES, pretreatment, federal facilities, and general permits. Finally, Chapter Six contains a discussion of EPA's oversight of approved State programs.

While Volume One of the guidance explains EPA's NPDES State Program requirements, Volume Two contains a number of model program documents illustrating the contents of approved programs and the approval process. These include

model Attorney General's Statements for NPDES and pretreatment and a model MOA that States can easily use in developing their programs. Also included are examples of documents that EPA has approved in other States. Volume Two also includes other appendices addressing EPA policies and memoranda, pertinent case law, and opinions by EPA's Office of General Counsel, relevant to State programs. A final appendix provides checklists to be used by both drafters and reviewers as a practical tool for initially outlining, refining, and evaluating a State's submission.

This format should make it easy for users to find those parts of the guidance that are relevant to their particular needs. Persons preparing or reviewing program modifications need only look to those portions of the document which concern the particular modification sought. For example, a State preparing a pretreatment program need only look to the portion of each chapter dealing with pretreatment. EPA expects that by clearly setting out the federal requirements and explaining the approval/modification processes, program reviews will be improved through reduced complications and increased awareness of expectations.